Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-479

STANLEY D. EDMONDS,

Petitioner,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDIX TO BRIEF OF AMICUS CURIAE, LIBERTY MUTUAL INSURANCE COMPANY

(Omitted due to Printer's Error)

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APPENDIX

JOURNAL OF COMMERCE
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LONGSHORE ACT SEEN HITTING INSURERS

By Alan F. Schoedel
Journal of Commerce Staff

Writing insurance under the controversial 1972 amendments to the U.S. Longshoremen's and Harbor Workers' Compensation Act has become a "monumental" and almost impossible task, a marine insurance seminar in Jacksonville, Fla., was told this week.

Claims brought under those amendments — which were intended to eliminate third-party suits by injured dock workers, but has not done so — increased by $50 million, or fourfold, in 1977, Leo Whelan, vice president of Marsh & McLennan, New York, told the one-day session. Marsh & McLennan and the Florida Junior College at Jacksonville sponsored the program.

It has been forecast that claims attributable to the 1972 amendments will aggregate from $2 billion to $3 billion, Mr. Whelan said. He charged that the U.S. Department of Labor, which administers the law — "it appears poorly" — takes no interest in the consequent problems of marine insurance.

As a result of the tremendous claims involved, the insurance industry itself is displaying a hands-off attitude toward writing coverage for waterfront industry.

Of the 310 companies cleared by the Department of Labor to write such insurance, at most 25, "and more likely only eight or ten," are actually doing so, Mr. Whalen said.

The 1972 amendments were intended to remove third-party actions, in which an injured longshoreman who

was collecting compensation under the act could sue the vessel involved for "unseaworthiness" and the ship in turn would sue the stevedore-employer of the dock worker to recover the amount of the claim. The act removed the "unseaworthiness" cause of action but increased compensation benefits by a large amount, broadened the physical area covered by the insurance, and left what Mr. Whalen called "a gray area" in defining just what a harbor worker was.

So liberal has the act become under the 1972 amendments that it is a "social welfare" and retirement program, giving injured workers guaranteed pay for life that is practically the same as their take-home would be if they worked, said the Marsh & McLennan executive. It has a built-in escalation clause to keep pace with national wage increases, and takes no account of what the worker might get in Social Security benefits or what his actual working life might be, he told the seminar.

Mr. Whalen said the problem of writing such insurance might be eased somewhat if the London market could be brought into the actions, but that is impossible under the law as it now is written. Marsh & McLennan is one of several marine insurance companies in the United States which are setting up affiliations with London marine insurance firms.

James Wilmers, vice president and general manager of Marsh & McLennan's office in Cincinnati, said the 1972 amendments coupled with the "very unfair" Jones Act provisions for liability have created a serious problem for the tug and barge industry in rivers and coastal waters of the United States.

Under some "extremely liberal" interpretations by the courts, he said, it is possible in some cases for a longshoreman to collect under the Longshoreman's and Harbor Workers' Compensation Act, and then sue a couple of years later for damages under the Jones Act. This is possible because a longshoreman injured while performing work normally considered that of a crewman can make claims as both a dock worker and crew member.

JOURNAL OF COMMERCE
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INLAND WATERWAY CHIEFS TO ISSUE WARNING

LONGSHOREMEN'S ACT SEEN IMPERILING PORT PROJECTS

By Stanley Mantrop

Journal of Commerce Special

Houston — Top-level inland waterway executives are planning to warn the new Congress in January that unless steps are taken to drastically overhaul the controversial Longshoremen's and Harbor Worker's Act that a large number of planned terminal and port projects will be imperiled and several small- and medium-sized shipyards will be forced out of business.

An industry survey made by **The Journal of Commerce** revealed that several groups are putting the finishing touches on submissions to the new Congress in January which call for total review of the compensation act on the grounds its portion of the total operating costs of the industry has risen to "alarming proportions."

The Inland Rivers Ports and Terminals Board chairman, Col. Milton Barschorf, said that on the Mississippi River and its tributaries alone, there are more than 60 ports and more than 1,100 terminals, many of them with expansion plans either under way or being studied, will be affected by the escalating compensation costs and other unrelated problems. He said his group is completing a submission to the new Congress to "take a long look at the situation" and at the things affecting its future growth.

Meetings Held

The terminal group has been meeting with representatives of the National Association of Stevedores, which represents shoreside employers at many deepsea and inland points, which also has added its voice to the gloomy outlook for port and terminal growth under the present act.

The group's executive director and general counsel, Thomas Wilcox, said he has the support of the major waterfront groups seeking Congressional relief, but he warns the opposition to any changes in the Longshore Act from the railroads and the Department of Labor is going to be formidable.

Mr. Wilcox said the bill for workmen's compensation costs has risen to more than 6 percent of gross income in many states which he said is "simply too high and a deterrent to expansion and investment."

The longshore group executive insisted that if many of those involved are to get any relief from a situation that has left some employers without insurance and others faced with going self-insured which financially they are unable to do, the act must be overhauled quickly.

"We are trying to convince Congress that a law the Chief Justice of the United States categorized as 'unclear as any statute could probably go' is changed," said Mr. Wilcox.

Because of the rising costs for insurance (when it's available), he said, as matters now stand over utilization and readily available expense benefits are creating an overtaxed and workable system, and "in light of that situation it is not too difficult to perceive that the Act and its myriad of problems are a deterrent to orderly port development."

One of Several Problems

Colonel Barschorf listed workmen's compensation problems as only one of several confronting the inland waterways next year, a period he looked forward to "with cautious optimism."

"The impact upon future growth of the inland waterways due to the pending imposition of user charges, the implementation of the President's announced water policies, and the preservation policies covering fish, plants and wild life, and archeological artifacts, has not yet been fully assessed and probably won't be for some time to come. He said "I do believe it's fair to say that the handwriting is on the wall and the overall outlook indicates a definite rein on our growth potential."

The stand of the terminal operators is supported by the barge operators, and those engaged in operating small and medium-sized shipyard facilities, of which hundreds dot the inland waterways as well as the sea coast.

The American Waterway's (AWO) Operators Inc.'s shipyard chairman, Herman Molsan, said the rising workmen's compensation costs are increasingly becoming a serious problem for the small- and medium-sized shipyards not only on the inland waterways but also at the ocean ports.

Their owners, he said, are finding themselves faced with a steadily shrinking insurance market because of the reluctance of the insurance industry to cover them under present conditions, including payment not only of rapidly-rising claims but also fraudulent ones.

Many have been left with no alternative but to seek self-insurance coverage in order to keep going, but the high cost of accomplishing this goal has left many operators considering closing up shop, said the AWO official.